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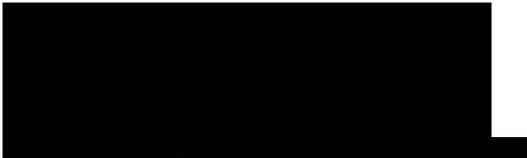
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U.S. Citizenship  
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FILE: [REDACTED]  
MSC-06-029-12298

Office: MIAMI

Date: **JUL 09 2008**

IN RE: Applicant: [REDACTED]

APPLICATION: Application for Status as a Temporary Resident pursuant to Section 245A of the Immigration and Nationality Act, as amended, 8 U.S.C. § 1255a

ON BEHALF OF APPLICANT:



INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. If your appeal was dismissed or rejected, all documents have been returned to the National Benefits Center. You no longer have a case pending before this office, and you are not entitled to file a motion to reopen or reconsider your case. If your appeal was sustained, or if your case was remanded for further action, you will be contacted.

A handwritten signature in black ink, appearing to read "R. P. Wiemann".

Robert P. Wiemann, Chief  
Administrative Appeals Office

**DISCUSSION:** The application for temporary resident status pursuant to the terms of the settlement agreements reached in *Catholic Social Services, Inc., et al., v. Ridge, et al.*, CIV. NO. S-86-1343-LKK (E.D. Cal) January 23, 2004, and *Felicity Mary Newman, et al., v. United States Immigration and Citizenship Services, et al.*, CIV. NO. 87-4757-WDK (C.D. Cal) February 17, 2004 (CSS/Newman Settlement Agreements), was denied by the District Director, Miami. The decision is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant submitted a Form I-687, Application for Status as a Temporary Resident under Section 245A of the Immigration and Nationality Act (Act), and a Form I-687 Supplement, CSS/Newman Class Membership Worksheet. The director determined that the applicant had not established by a preponderance of the evidence that he had continuously resided in the United States in an unlawful status for the duration of the requisite period. The director denied the application, finding that the applicant had not met his burden of proof and was, therefore, not eligible to adjust to temporary resident status pursuant to the terms of the CSS/Newman Settlement Agreements.

On appeal, the applicant's counsel asserts that his testimony is credible, and that the affidavits and documents offered in support of his application are bonafide, probative and genuine. Counsel maintains further that the applicant has met all of the requirements for eligibility as status as a temporary resident pursuant to the terms of the settlement agreements.

An applicant for temporary resident status must establish entry into the United States before January 1, 1982, and continuous residence in the United States in an unlawful status since such date and through the date the application is filed. Section 245A(a)(2) of the Act, 8 U.S.C. § 1255a(a)(2). The applicant must also establish that he or she has been continuously physically present in the United States since November 6, 1986. Section 245A(a)(3) of the Act, 8 U.S.C. § 1255a(a)(3). The regulations clarify that the applicant must have been physically present in the United States from November 6, 1986 until the date of filing the application. 8 C.F.R. § 245a.2(b).

For purposes of establishing residence and physical presence under the CSS/Newman Settlement Agreements, the term "until the date of filing" in 8 C.F.R. § 245a.2(b) means until the date the applicant attempted to file a completed Form I-687 application and fee or was caused not to timely file during the original legalization application period of May 5, 1987 to May 4, 1988. CSS Settlement Agreement paragraph 11 at page 6; Newman Settlement Agreement paragraph 11 at page 10.

The applicant has the burden of proving by a preponderance of the evidence that he or she has resided in the United States for the requisite period, is admissible to the United States under the provisions of section 245A of the Act, and is otherwise eligible for adjustment of status. The inference to be drawn from the documentation provided shall depend on the extent of the documentation, its credibility and amenability to verification. 8 C.F.R. § 245a.2(d)(5).

Although the regulation at 8 C.F.R. § 245a.2(d)(3) provides an illustrative list of contemporaneous documents that an applicant may submit in support of his or her claim of continuous residence in the United States in an unlawful status since prior to January 1, 1982, the submission of any other relevant document is permitted pursuant to 8 C.F.R. § 245a.2(d)(3)(vi)(L).

The “preponderance of the evidence” standard requires that the evidence demonstrate that the applicant's claim is “probably true,” where the determination of “truth” is made based on the factual circumstances of each individual case. *Matter of E-M-*, 20 I&N Dec. 77, 79-80 (Comm. 1989). In evaluating the evidence, *Matter of E-M-* also stated that “[t]ruth is to be determined not by the quantity of evidence alone but by its quality.” *Id.* at 80. Thus, in adjudicating the application pursuant to the preponderance of the evidence standard, the director must examine each piece of evidence for relevance, probative value, and credibility, both individually and within the context of the totality of the evidence, to determine whether the fact to be proven is probably true.

Even if the director has some doubt as to the truth, if the petitioner submits relevant, probative, and credible evidence that leads the director to believe that the claim is “probably true” or “more likely than not,” the applicant or petitioner has satisfied the standard of proof. *See U.S. v. Cardozo-Fonseca*, 480 U.S. 421, 431 (1987) (defining “more likely than not” as a greater than 50 percent probability of something occurring). If the director can articulate a material doubt, it is appropriate for the director to either request additional evidence or, if that doubt leads the director to believe that the claim is probably not true, deny the application or petition.

The issue in this proceeding is whether the applicant has furnished sufficient credible evidence to meet his burden of establishing continuous unlawful residence in the United States for the duration of the requisite period. Here, the applicant has failed to meet this burden.

The record shows that the applicant submitted a Form I-687 application and Supplement to Citizenship and Immigration Services (CIS) on October 29, 2005. At part #30 of the Form I-687 application where applicants were asked to list all residences in the United States since first entry, the applicant listed the following residences:

1. [REDACTED] Jackson Heights, NY from November, 1981 to June, 2002
2. [REDACTED] Brooklyn, NY from July, 2002 to November, 2002
3. [REDACTED], Key West, FLA 33040 from November, 2002 to the present.

Similarly, at part #33, he listed his only employment as “walk from door to door” at “various places in U.S.” from November, 1981 to March, 2005. The applicant claimed one departure from the United States to visit family in Bangladesh from June, 2002 to July, 2002.

In support of his application, the applicant submitted a signed but unsworn statement from [REDACTED], and a certified photocopy of [REDACTED] United States passport. [REDACTED] states that he was living in Jamaica, NY, when he first met the applicant sometime in December, 1981 at the Parkchester train station. [REDACTED] claims that the applicant was searching for an apartment to share at the time, and that the applicant told him he first entered the United States through Mexico. The AAO notes that [REDACTED]’s statement lacks any details that would lend credibility to his relationship with the applicant. The declarant does not indicate under what circumstances he met the applicant in 1981, how he dates his acquaintance with the applicant, an address where the applicant resided in the United States, or how frequently he had contact with him. Given these deficiencies, this statement has minimal probative value in supporting the applicant’s claim that he entered the United States in 1981.

The applicant also submitted a similar declaration from [REDACTED] which includes a photocopy of [REDACTED]’s New York state driver’s license. [REDACTED] states that he is a self-employed taxi driver, and that he first met the applicant in Jamaica, NY, while he was shopping, on December 20, 1981. [REDACTED] states also that the applicant told him he first entered the United States through Mexico, and that he currently “maintains a relationship” with the applicant. Like the statement submitted by [REDACTED] mentioned above, the statement submitted by [REDACTED] lacks any details that would lend credibility to a claimed 24-year relationship with the applicant.

It is noted that neither of the declarants stated with any specificity where they first met the applicant, how they date their acquaintance with him, or whether they have direct, personal knowledge of the applicant’s residence during the critical time period between 1981 and 1988. The declarants’ uniformly ambiguous references to meeting the applicant while they were shopping or while the applicant was looking for an apartment are not persuasive. Furthermore, the lack of detail regarding the events and circumstances of the applicant’s residence is significant given [REDACTED]’s claim to have a friendship with the applicant spanning 24 years. For these reasons, both of these declarations have very limited probative value as evidence of his continuous residence in the United States since a date prior to January 1, 1982.

Additionally, the AAO notes that the evidence of record before us contains other applications for immigration benefits whose information does not correspond with the applicant’s factual assertions in his application for temporary residence. On a family based visa petition (Form I-130) submitted on November 11, 2004, the petitioner therein alleges to be the applicant’s U.S. citizen wife. She states that the applicant first entered the United States on March 30, 2002, with a B-2 visitor’s visa, and identifies an arrival/departure record (Form I-94) no. [REDACTED]. She claims to have married the applicant on April 4, 2003, in Miami, Fla. Furthermore, on

November 5, 2004, the applicant signed a statement of Biographic Information (Form G-325) wherein he avers that he resided in Bangladesh from 1998 to March, 2002. Indeed, the photocopy of the applicant's passport bears a date stamp showing that the applicant was inspected at the NY port of entry on March 30, 2002. Thus, this information is in direct contrast to the applicant's assertions on his Form I-687 that he entered the United States through Mexico and that he resided in Jackson Heights, NY, from November, 1981 to June, 2002. The AAO notes that the petitioner later withdrew the family based application for adjustment of status on September 2, 2005.

The AAO has had the opportunity to compare and contrast both statements of Biographic Information (Form G-325) submitted on two different occasions in support of two different forms of immigration benefits and we note that the factual assertions diverge considerably. On the earlier Form G-325, the applicant states that he resided in Bangladesh from 1998 to March, 2002. However, the later Form G-325 reveals that the applicant claims he resided in Bangladesh from birth until November, 1981. The earlier G-325 states that the applicant resided in Brooklyn from March, 2002 to July, 2002; the later G-325 identifies the applicant as residing at the same Brooklyn address from July, 2002 to November, 2002. The earlier G-325 states that the applicant resided in Ft. Lauderdale, Fla., from July, 2002 to April, 2003; the later G-325 states that the applicant resided Key West, Fla., from November, 2002 to the present. Clearly, the applicant could not reside in both Florida and New York at the same time. The conflicting information contained in both of the G-325 forms serves to seriously undermine the credibility of the applicant's claim of residence and presence in the United States for the critical periods of time. Thus, these documents are of little probative value in establishing eligibility for status as a temporary resident pursuant to the terms of the settlement agreements.

Furthermore, the AAO notes that the applicant signed a sworn statement, under penalty of perjury, before a district adjudications officer on August 17, 2006, attesting to two departures from the United States subsequent to his alleged initial entry: the first in May, 1994 to June, 1994, and the second in 2001 to March, 2002. Nonetheless, the applicant listed only one departure from the United States on his Form I-687 from June to July, 2002.

The director denied the application for temporary residence on November 1, 2006. In denying the application, the director found that the applicant's testimony that he entered the United States in 1981 is not credible. Specifically, the director referenced the inconsistencies and conflicting information contained in the various documents submitted by the applicant, and concluded that they were not credible and uncorroborated by verifiable, probative documentary evidence. Thus, the director determined that the applicant had failed to meet his burden of proof by a preponderance of the evidence.

On appeal, the applicant asserts that he did arrive in the United States in 1981, and emphasizes that he has met the statutory requirements for temporary resident status. He submits no additional evidence in support of his application, and does not address the inconsistencies in his testimony or the conflicts between the various documents noted above.

Notably, the applicant stops short of conceding that he submitted false information in support of his family based immigrant visa petition. Clearly, he was not simultaneously working and residing in the United States and Bangladesh, nor residing at different addresses in New York, Fort Lauderdale, and Miami at the same time, and it is thus reasonable to conclude that false statements have been made in at least one of the two proceedings. As the applicant has provided inconsistent accounts of his employment and residence for the same periods of time, he has seriously undermined the credibility of his testimony. It is incumbent upon the applicant to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the applicant submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). Doubt cast on any aspect of the applicant's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the application. *Id.* at 591.

In summary, the applicant has not provided any credible evidence of residence in the United States or of entry to the United States before January 1, 1982 except for his own inconsistent assertions and the statements and affidavits noted above. The statements and affidavits lack credibility and probative value for the reasons noted.

In this case, the absence of credible and probative documentation to corroborate the applicant's claim of continuous residence for the entire requisite period, as well as the inconsistencies and contradictions noted in the record, seriously detract from the credibility of his claim. Pursuant to 8 C.F.R. § 245a.2(d)(5), the inference to be drawn from the documentation provided shall depend on the extent of the documentation, its credibility and amenability to verification. Given the inconsistencies in the record and the lack of credible supporting documentation, it is concluded that he has failed to establish by a preponderance of the evidence that he has continuously resided in an unlawful status in the United States for the requisite period as required under both 8 C.F.R. § 245a.2(d)(5) and *Matter of E- M--*, *supra*. The applicant is, therefore, ineligible for temporary resident status under section 245A of the Act on this basis.

**ORDER:** The appeal is dismissed. This decision constitutes a final notice of ineligibility.